



## United States– Impact of Recent Executive Orders Related to Immigration on Refugees Claims and Immigration Enforcement in Canada

### Issue:

During the week of January 23-27, 2017, President Donald Trump issued three Executive Orders pertaining to immigration and border security. The orders placed restriction on visitors, asylum seekers and Convention Refugees from specific countries and increased resources for immigration enforcement and removal of aliens within the country. (U)

The primary implications for the CBSA are a significant increase in refugee claims in Canada.

### Analysis:

The Executive Orders are titled “Border Security and Immigration Enforcement Improvements”, “Enhancing Public Safety in the Interior of the United States” and “Preventing the Nation from Foreign Terrorist Entry into the United States.” They outline three broad areas:

#### Restrictions of access to the United States territory:

- Immediate building of the physical wall on the southern border of the U.S.;
- Cessation of visa issuance for 90 days for nationals considered “immigrants and non-immigrants” from Iraq, Iran, Libya, Somalia, Sudan and Yemen (with some exceptions – diplomats, NATO) and for Syria for an indefinite period of time;
- Institution of interviews for all visa applicants;
- Uniform screening standards for all immigration programs;
- Overall reduction of refugees admitted to the U.S. with a preference for religious minorities; and
- Biometric entry-exit tracking for all travelers to the U.S. (U)

*Implications for Enforcement and Intelligence:* Increased refugee claims in all modes; increased travel by Mexican nationals to Canada, Increased refugee claims and enforcement action against Mexican nationals; increased use of the U.S. – Canada border to enter the U.S. by third-country nationals (PA)

#### Increased resources for immigration enforcement and processing of asylum claims

- Additional 5,000 Border Patrol agents and 10,000 Immigration Officers for asylum claims processing and enforcement and removal;
- State and local law enforcement officials are now authorized to perform functions of immigration officers with respect to investigations, apprehensions, or detentions of aliens;
- A comprehensive study of all aspects of the border to achieve “complete operational control” of the southern border over the next six months; and
- Large increase in reporting to the President and to the public. (U)

*Implications for Enforcement and Intelligence:* Increased refugee claims by long-term undocumented residents of the U.S.; more between-the-port entries from the U.S. resulting in increased inland claims;



#### Reduction of liberty and privacy:

- Increased use of detention for illegal entry (elimination of “catch and release”);
- Priority Enforcement Program is eliminated and the controversial “Secure Communities” reinstituted. Secure Communities required local law enforcement to detain for minor infractions and caused conflict between local governments/law enforcement and Federal law enforcement.
- All Federal funding to cities continuing to identify themselves as Sanctuary Cities will be revoked. (U)

*Implications for Enforcement and Intelligence:* increased refugee claims at ports of entry and inland; increased numbers of persons who are under enforcement action in the U.S. (self-deportation) (PA)

#### **Forecasts:**

##### Impact on refugees and on Canadians heading to the U.S.

Refugee claims in Canada will increase at the land border and inland over the next two years. The top five countries for land border claims in 2016 were Colombia (632), Syria (505), Eritrea (492), Iraq (470) and Burundi (463). Of the countries proposed to be banned for entry and status by Trump, only Iraq (5<sup>th</sup>), Syria (7<sup>th</sup>) and Somalia (11<sup>th</sup>) are in the top 15 countries for claimants arriving in all modes in Canada in 2016. The number of claims from Iraqi and Syrian nationals will likely decrease in Canada as half gained access to Canada as U.S. Non-Immigrant visa holders. (PA)

##### Safe-Third Country Agreement

Claimants regularly enter Canada between ports in Pacific Region, Prairie Region and Quebec Region to avoid restrictions of the Safe Third-Country Agreement, however numbers have increased dramatically in Quebec Region in 2016 and will continue into 2017 due to the ease of geographical access (i.e. fewer geographical barriers than Ontario). Non-governmental agencies and refugee lawyers in Canada are calling for the repeal of the Safe-Third Country Agreement removing restrictions to making claims only applied to those at the land border because the U.S. may no longer be considered “safe” as an asylum country and due to a possible increase in injury or death to individuals seeking to circumvent the agreements restrictions while crossing the border on rough terrain or in harsh conditions. (PA)

##### Why Canada? Who will we see?

Individuals may choose to claim in Canada for the following reasons:

- fear of detention for those who are non-criminal and undocumented;
- fear of long-term detention for Trump’s “criminal aliens”;
- fear of removal to Central America to face violence or death;
- lack of capacity to re-integrate in Central America or elsewhere;
- Mexicans who are no longer able to traverse the U.S. Southern border; or
- being an individual from the seven listed nations present in the U.S. and no longer eligible for asylum. (U)

As the immigration enforcement ramps up it is highly likely there will be an increase of claimants with separated immediate families, young adults who arrived as children in the U.S., and U.S. citizen children born to long-term undocumented residents in the U.S. (PA)

## EXECUTIVE ACTIONS AND IMPLICATIONS FOR CANADA

Week of March 13 - 17, 2017

Date & Title		Description	Implications for Canada
<b>BORDERS &amp; IMMIGRATION</b>			
1	<b>JAN. 25/Executive Order 13767 on Border Security and Immigration Enforcement Improvements<sup>1</sup></b>	<p>Directs executive departments and agencies to "deploy all lawful means to secure the Nation's southern border" and "to repatriate illegal aliens swiftly, consistently, and humanely".</p> <p>Instructs the Secretary of Homeland Security to deliver a report within six months setting out a plan to build a "physical wall" along the Southern border and the amount of money Congress will be asked to provide through appropriations, both for construction and to acquire land from private owners.</p> <p>The Administration's March 16 "skinny budget" proposal for FY2018 includes a 6.8% increase in the budget for Homeland Security, with a focus on immigration enforcement, including "additional resources for a wall on the southern border with Mexico".</p>	
2	<b>JAN. 25/Executive Order 13768 on Enhancing Public Safety in the Interior of the United States<sup>2</sup></b>	<p>Directs agencies to "employ all lawful means to ensure the faithful execution of the immigration laws of the United States against all removable aliens."</p> <p>Directs the federal government to ensure that sanctuary cities do not receive non-statutory federal grants. An estimated 364 jurisdictions across the U.S. have a specific policy limiting cooperation with federal authorities regarding identification of individuals who are in violation of immigration law.</p> <p>Directs sanctioning of countries that refuse to accept the return of their nationals who are subject to removal from the U.S.</p> <p>Directs agencies to ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the <i>Privacy Act</i> regarding personally identifiable information.</p>	

	Date & Title	Description	Implications for Canada
3	<b>JAN. 27/Executive Order 13769 on Protecting the Nation from Foreign Terrorist Entry into the United States<sup>iii</sup></b>	Replaced by a new Executive Order on March 6, 2017. On February 9, the 9 <sup>th</sup> district federal appeals court in San Francisco unanimously upheld the temporary restraining order (TRO) on the Executive Order.	
4	<b>MARCH 6/Executive Order 13780 Protecting the Nation from Foreign Terrorist Entry into the United States<sup>iv</sup></b>	<p>Revokes January 27 EO (13769) and replaces it with a new order that was scheduled to go into effect on March 16, 2017. On March 15, U.S. federal courts in Hawaii and Maryland placed a temporary restraining order on the EO. The U.S. Administration is expected to appeal.</p> <ul style="list-style-type: none"> <li>• Suspends for 90 days entry of foreign nationals from Sudan, Syria, Iran, Libya, Somalia, and Yemen who are outside the United States and who did not have a valid visa on January 27, 2017. (key difference with EO 13769: no longer applies to nationals of Iraq).</li> <li>• Does not apply to permanent residents of the United States, foreign nationals who already hold valid documents; dual nationals (e.g. a dual national travelling on a Canadian passport); refugees who have already been admitted to the U.S.; re-admission of foreign nationals with valid work or study permits; young children, adoptees and those requiring urgent medical care.</li> <li>• Authorizes consular officers or Customs and Border Protection officials to provide waivers on a case-by-case basis.</li> <li>• Suspends the U.S. Refugee Admissions Program until June 16, 2017 (key difference with EO 13769: removes indefinite suspension for refugees from Syria).</li> <li>• Directs expedited biometric entry-exit tracking system for "in-scope" travellers to the United States (Key difference with EO 13769: applied to <u>all</u> travellers to the United States).</li> <li>• Directs the Secretary of State to review all non-immigrant visa reciprocity arrangements to ensure that they are "truly reciprocal" in terms of validity period and fees.</li> </ul>	<p>Canadian citizens, including dual nationals from the six countries travelling on Canadian passports are excluded from the scope of the EO, as are people who have a valid visa to enter the United States.</p> <p>Canadian permanent residents from the six countries are eligible to apply for a visa at a location within Canada (i.e. U.S. Embassy or Consulate), but there is no certainty with regard to visa/waiver approval. (Canada was the only country named in the list of exemptions for this category.)</p>

Date & Title		Description	Implications for Canada
5	<b>MARCH 6: Memorandum for the Secretary of State, the Attorney General, the Secretary of Homeland Security Regarding Implementing Immediate Heightened Screening and Vetting of Applications for Visas and Other Immigration Benefits<sup>v</sup></b>	<p>Directs the Secretary of State and Secretary of Homeland Security to implement protocols and procedures to "enhance the screening and vetting of applications for visas and all other immigration benefits", including data collection.</p> <p>Directs the Secretary of State, Secretary of Health and Human Services, Secretary of Homeland Security and Director of the Office of Management and Budget to submit a report within 180 days comparing the costs of supporting refugees in countries of first asylum with doing so in the United States.</p>	
<b>TRADE &amp; ECONOMIC</b>			
6	<b>JAN. 23/ 2017-01845: Presidential Memorandum Regarding Withdrawal of the United States from the Trans-Pacific Partnership Negotiations and Agreement<sup>vi</sup></b>	<p>Directs USTR to withdraw from Trans-Pacific Partnership (TPP) and to begin pursuing, wherever possible, bilateral trade negotiations.</p> <p>On January 30, the acting USTR wrote to Minister Champagne stating that the U.S. does not intend to become a party to the TPP.</p>	
7	<b>JAN. 30/ Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs<sup>vii</sup></b>	<p>Instructs executive departments and agencies to implement a "2 for 1" rule for regulations: "for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process."</p> <p>On February 8, the Natural Resources Defense Council, the Communications Workers of America and Public Citizen initiated joint litigation in the D.C. District Court challenging the order. The complaint alleges that the Order is unconstitutional and arbitrary. If the Court accepts any of these arguments, the legality of the Order would be in doubt.</p>	
8	<b>FEB. 3/ Executive Order 13772 on Core Principles for Regulating the United States Financial System<sup>viii</sup></b>	<p>Directs the U.S. Secretary of the Treasury to identify regulations that are not consistent with core principles outlined in the EO, including "enabling American companies to be competitive with foreign firms in domestic and foreign markets." There are limits on the scope of the EO's application: it does not (and cannot) repeal the provisions of the 2010 <i>Dodd-Frank Wall Street Reform and Consumer Protection Act</i> and does not have scope to direct the activities of the Securities and Exchange Commission (an independent agency).</p>	

Date & Title		Description	Implications for Canada
9	<b>FEB.24/Executive Order 13777 on Enforcing the Regulatory Reform Agenda<sup>ix</sup></b>	Directs heads of executive agencies to designate a Regulatory Reform Officer to oversee implementation of regulatory reform policies. The Regulatory Reform Officer will lead agency identification of regulations for repeal, replacement or modification based on the following criteria: the extent to which regulations are outdated, impede job growth, impose costs that exceed benefits, or otherwise interfere with regulatory reform efforts. Appears to work as a complement to EO 13771 (the "2 for 1" order).	Assessing potential role of Regulatory Reform Officers in context of regulatory cooperation.
<b>DEFENCE &amp; SECURITY</b>			
10	<b>JAN. 27/2017-02282: Presidential Memorandum on Rebuilding the U.S. Armed Forces<sup>x</sup></b>	<p>Directs the Secretary of Defense to conduct a 30-day readiness review assessing readiness conditions including training, equipment maintenance, munitions modernization and infrastructure and submit to the President a report identifying actions that can be implemented within the current fiscal year.</p> <p>Directs the Secretary of Defense to produce a National Defense Strategy, initiate a Nuclear Posture Review and initiate a Ballistic Missile Defense Review.</p>	
11	<b>JAN. 28/2017-02386: Presidential Memorandum on a Plan to Defeat the Islamic State of Iraq and Syria<sup>xi</sup></b>	Directs the Secretary of Defense to submit a preliminary draft of the plan to defeat ISIS, including identification of new coalition partners.	

Date & Title		Description	Implications for Canada
12	<b>FEB. 9/Executive Order 13776 on a Task Force on Crime Reduction and Public Safety<sup>xii</sup></b>	Directs the Attorney General to establish a Task Force on Crime Reduction and Public Safety. Focus areas are illegal immigration, drug trafficking and violent crime.	
13	<b>FEB. 9/Executive Order 13773 on Enforcing Federal Law with Respect to Transnational Criminal Organizations and Preventing International Trafficking<sup>xiii</sup></b>	The order includes direction to enhance cooperation with foreign counterparts against transnational criminal organizations and subsidiary organizations, including, where appropriate and permitted by law, through sharing of intelligence and law enforcement information.	
<b>ENERGY &amp; ENVIRONMENT</b>			
14	<b>JAN. 24/Executive Order 13766 on Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects<sup>xiv</sup></b>	Directs the Chairman of the White House Council on Environmental Quality to 1) determine whether an infrastructure project is a "high priority" and if so, 2) coordinate with the relevant agency to expedite procedures for completion of environmental reviews and approvals.	
15	<b>JAN. 24/2017-02035: Presidential Memorandum Regarding Construction of the Keystone XL Pipeline<sup>xv</sup></b>	<p>Invites TransCanada to submit a new application for a Presidential permit for the construction and operation of the Keystone XL Pipeline.</p> <p>Directs Secretary of State to reach a final permitting decision – including on any conditions that the project must meet to serve the national interest – within 60 days. TransCanada submitted a renewed application to the Department of State on January 26.</p> <p>Signed at the same time as <b>2017-02032: Presidential Memorandum for the Secretary of the Army on Construction of the Dakota Access Pipeline.</b><sup>xvi</sup></p>	

Date & Title		Description	Implications for Canada
16	<b>JAN. 24/2017-02031: Memorandum for the Secretary of Commerce Regarding Construction of American Pipelines<sup>xvii</sup></b>	<p>Directs the Secretary of Commerce to develop a plan to ensure that all new pipelines in the U.S. use materials and equipment produced in the U.S., "to the maximum extent possible and to the extent permitted by law".</p> <p>On March 16, the U.S. Department of Commerce published a Federal Register notice inviting public comments to inform a plan for the domestic sourcing of materials for the construction, retrofitting, repair and expansion of pipelines in the United States.<sup>xviii</sup> The comment period closes on April 7, 2017. The Commerce Secretary is required to deliver this plan to the President by July 23, 2017.</p>	
17	<b>FEB. 14/Signed into law House Joint Resolution 41/Senate Joint Resolution 9 – Providing for Congressional Disapproval of a rule submitted by the Securities and Exchange Commission relating to "Disclosure of Payments by Resource Extraction Issuers"<sup>xix</sup></b>	The joint House-Senate resolution nullifies the "Disclosure of Payments by Resource Extraction Issuers" rule finalized by the Securities and Exchange Commission on July 27, 2016. The rule, mandated under the <i>Dodd-Frank Wall Street Reform and Consumer Protection Act</i> , requires resource extraction issuers to disclose payments made to governments for the commercial development of oil, natural gas, or minerals.	
18	<b>FEB. 16/ Signed into law House Joint Resolution 38 – Disapproving a rule submitted by the Department of the Interior (Stream Protection Rule)<sup>xx</sup></b>	The joint House-Senate resolution nullifies the Stream Protection Rule finalized by the Department of the Interior's Office of Surface Mining Reclamation and Enforcement on December 20, 2016. The rule addresses the impacts of surface coal mining operations on surface water, groundwater, and the productivity of mining operation sites.	NRCan and ECCC analysis underway.
19	<b>FEB.28/Presidential Executive Order 13778 on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule<sup>xxi</sup></b>	<p>Directs government agencies to begin the process to eliminate the <i>Waters of the U.S.</i> rule, jointly issued by the Environmental Protection Agency (EPA) and the Army Corps of Engineers in 2015. <i>Waters of the U.S.</i> aimed to clarify which streams and wetlands are protected under the <i>Clean Water Act</i>. It was opposed by agriculture groups and was subject to a court challenge by 13 U.S. states. The new Executive Order:</p> <ul style="list-style-type: none"> <li>• Directs a formal agency review of the rule, which must be done through the regulatory process including public comment period</li> <li>• Directs the EPA and Army Corps of Engineers to consider a narrower interpretation of navigable waters, based on Supreme Court Justice Antonin Scalia's opinion, when reviewing the rule. President Trump indicated his view that the <i>Clean Water Act's</i> jurisdiction should only extend to navigable waters involved in interstate commerce.</li> </ul>	AAFC and ECCC analysis underway.



Date & Title		Description	Implications for Canada
20	<b>MARCH2/ 2017-04458 Environmental Protection Agency Notice Regarding Withdrawal of Information Collection Request for Owners and Operators in the Oil and Natural Gas Industry<sup>xxii</sup></b>	Withdraws an Information Collection Request (ICR) that could have served as a precursor to potential regulation of methane emissions from existing oil and gas sources. The measure does not remove all constraints on methane emissions, as 2012 air quality and toxics rules and June 2016 methane rules remain in place. Additionally, several individual states have methane emissions rules in place.	ECCC analysis underway.
<b>DEVELOPMENT &amp; HUMAN RIGHTS</b>			
21	<b>JAN. 23/2017-01843: Presidential Memorandum Regarding the Mexico City Policy<sup>xxiii</sup></b>	<p>Reinstates the "Mexico City" policy, which prohibits foreign NGOs that receive family planning funding assistance from the U.S. from performing or actively promoting abortion as a method of family planning, even with money that does not come from the United States.</p> <p>On January 25th, Lilianne Ploumen, Minister for Foreign Trade and Development of the Netherlands announced the creation of an international fund, <i>She Decides</i>, to support sexual and reproductive health and rights (SRHR) in response to the Mexico City Policy.</p> <p>On March 8, 2017, Canada announced \$650M over three years in funding for SRHR. Canada's support will focus on providing comprehensive sexuality education, strengthening reproductive health services, and investing in family planning and contraceptives. It will also help prevent and respond to sexual and gender-based violence, including child early and forced marriage and female genital mutilation and cutting, and support women's right to choose safe and legal abortion, and access to post-abortion care.</p>	To date, no Canadian organizations have contacted GAC to confirm that they have been directly affected by the policy. Canada continues to express public support for the full range of sexual and reproductive health services and information, including women's right to choose safe and legal abortion and access to post-abortion care.
<b>GOVERNANCE</b>			
22	<b>MARCH 14/Executive Order 13781 on a Comprehensive Plan for Reorganizing the Executive Branch<sup>xxiv</sup></b>	Directs federal agencies to submit plans to the Director of the Office of Management and Budget (OMB) for reorganizing agencies – "if appropriate" – in ways that will improve their efficiency, effectiveness, and accountability. These plans are to be submitted within 180 days. A public comment period is expected. Following the public comment period, OMB Director Mulvaney will submit to the President a plan for reorganizing the executive branch that includes recommendations on 1) functions of agencies (including components	Multiple departments monitoring.

Date & Title		Description	Implications for Canada
		and programs) that could be transferred to state/local governments/private sector; 2) redundancies in functions or administrative capabilities across government; 3) whether operating costs of agencies, a component or a program are justified by its public benefits. Media speculation that the most affected agencies would be the State Department, USAID and the EPA.	
23	<b>MARCH 16/ America First: A Budget Blueprint to Make America Great Again<sup>xxv</sup></b>	<p>The White House released its “skinny budget”, which contains topline numbers for the various components of the Administration’s Federal budget proposal to Congress. A full budget proposal for fiscal year 2018 is expected in May. The “skinny budget” proposal includes increases to the Department of Defense and to the Department of Homeland Security (for the latter, a focus on immigration enforcement, including “additional resources for a wall on the southern border with Mexico”), as well as a proposed increase of \$500 million to Health and Human Services for opioid use prevention and treatment measures.</p> <p>The budget proposal outlines deep reductions to the U.S. Department of State, USAID, and Treasury International Programs, elimination of funding for several internationally-focused organizations, as well as a proposed 31% reduction to the Environmental Protection Agency, a proposed elimination of U.S. funding for international climate change programs and elimination of the Great Lakes Restoration Initiative.</p>	

**Executive actions removed from the table this week (following assessment of minimal or no implications for Canada):**

- JAN.25/2017-02044: Presidential Memorandum Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing<sup>xxvi</sup>
- FEB.3/ 2017-02656: Presidential Memorandum on Fiduciary Duty Rule<sup>xxvii</sup>
- FEB. 9/Executive Order 13774 on Preventing Violence Against Federal, State, Tribal, and Local Law Enforcement Officers<sup>xxviii</sup>
- FEB. 22/U.S. Department of Justice; U.S. Department of Education Administrative Guidance Letter Regarding Transgender Students<sup>xxix</sup>



Canada Border  
Services Agency

Agence des services  
frontaliers du Canada



# Proposed Strategy for the CANPASS Air & Private Boats Programs

For Director General Approval

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Canada



## CONTEXT

- CANPASS Air offers secure and more efficient entry into Canada for low-risk, pre-screened travellers.
- CANPASS Private Boat offers expedited border clearance for low-risk, pre-screened persons entering Canada by private pleasure boat.
- Between FY 2007-2008 and 2015-2016
  - Membership in CANPASS Air declined by 96% and Private Boats by 86%;
  - Passage in CANPASS Air declined by 99% and Private Boats by 85%;

CANPASS PROGRAM	MEMBERSHIP (as of Dec 31, 2016)	PASSAGE (as of Dec 31, 2016)
PRIVATE BOAT	1,183 (▲ from 1,166 the previous FY)	884 (▲ from 650 the previous FY)
AIR	306 (▼ from 496 the previous FY)	41 (▼ from 123 the previous FY)



## SUMMARY OF FINDINGS

The 2016 Evaluation of Trusted Traveller Programs demonstrated the limited rationale to maintain both programs considering:

- Better alternatives: NEXUS offers more benefits at a lower costs (\$50 for five years) for expedited entry into Canada and the US in air, land and marine, dedicated Canadian Air Transportation Security Authority (CATSA) screening lines and kiosks at airports;
- Limited benefits: CANPASS Air members are no longer able to use the kiosks at passage and CANPASS Private Boats program offers similar reporting as conventional boating
- Low and declining membership and passage statistics for both programs.

Due to these findings, the Evaluation Executive Committee recommended an implementation strategy be developed to **discontinue** the CANPASS Air and CANPASS Private Boats programs



## PROPOSED STRATEGY

- **Discontinue and phase out CANPASS Air & Private Boats**
  - Cease accepting memberships and renewals as of Dec. 31, 2017
  - Active members will maintain their privileges until membership expires:
    - 1 year for CANPASS Air
    - 5 years for CANPASS Private Boats
  - This strategy was chosen as it would have minimum impact on existing members while still adhering to the recommendation
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## IMPACT/RISK OF DISCONTINUANCE

### LOW

- **REGULATIONS**
- Amendments to the *Presentation of Persons (2003) Regulations*
- **OPERATIONS**
- Low and declining membership and passage figures for both
- **STAKEHOLDERS**
- Private Boat: 23 of CANPASS Private Boat marinas are also NEXUS sites; only one is CANPASS only.
- Air: Members continually expressed discontent with program.

### MEDIUM

- **LEGAL**
- Potential legal challenge under the *Charter* or a discrimination charge under the *Canadian Human Rights Act*
- **INFORMATION TECHNOLOGY (SYSTEMS)**
- System fix required to remove functionalities related to both programs while maintaining existing programs

### HIGH

- **POLITICAL ENVIRONMENT**
- Current U.S. immigration and privacy policies may increase the need to maintain a Canadian program in the air and marine modes as a 'safety net' for Canadian NEXUS applicants/members



## ALTERNATIVE MITIGATION OPTION

- Current U.S. immigration and privacy policies may increase the likelihood of the legal risk identified





## WAY FORWARD

- Present the implementation strategy to the Executive Committee for approval by June 2017
- Implement the strategy by end of December 2017

### DISCONTINUE BOTH PROGRAMS:

- **Cease accepting memberships and renewals** to the CANPASS Air and Private Boats program by December 31, 2017
  - Issue Customs Notice on Dec 31, 2017, and begin regulatory amendments in early 2018
  - Engage ISTB on cost-effective information technology solutions
  - Perform a post-implementation review including evaluating the impact on stakeholders by March 31, 2019
- Develop a Stakeholder Engagement and Outreach Plan
  - Advise CBSA staff (including the Telephone Reporting Centre, Enrolment Centres and Canadian Processing Centres) at beginning of October 2017
  - Inform members by telephone, letter or e-mail by end of October 2017 (TBD)
  - Update external facing CBSA website by mid-November 2017
  - Issue an Operational Bulletin to CBSA front-line staff in December 2017

### ALTERNATIVE MITIGATION CONSIDERATION:



# ANNEX A

## CROSS-ANALYSIS OF CANPASS AIR & PRIVATE BOATS

	CANPASS AIR	CANPASS Private Boats
Processing Fee	\$50	\$40
Membership	1 Year	5 Years
Application Process	<ul style="list-style-type: none"> <li>Paper applications for both programs submitted to Canadian Processing Centre (CPC) in Montreal, QC or Surrey, BC; Niagara Falls, ON only processes Private Boat applications</li> <li>Risking and data entry are completed and processed at CPC against CPIC, NCIC, IBAS and ICES systems</li> <li>A CBSA officer conducts a full background check of criminal records, national security and compliance with the provisions of program legislation to determine whether the applicant is eligible to the program</li> <li>Periodic assessments are done for Private Boats program (5 year membership)</li> </ul>	
Enrolment Process	In-person interview at an Enrolment Centre (EC) to finalize enrolment	Mandatory referral upon first passage to finalize enrolment
Card / Permit	Non-RFID Card	Paper Permit Contains no security features
Passage	Uses the Special Services Counter	Telephone Reporting Centre (TRC) – minimum 30 minutes but no more than 4 hours before arrival



## ANNEX B

# TELEPHONE REPORTING CENTRE PROCEDURES

- Reporting process of CANPASS Private Boats and NEXUS in the marine mode:
  - These programs allow their members to call between 30 minutes and 4 hours **in advance** of arrival in Canada at any of the 427 designated marine sites in Canada, 22 of which are CANPASS and NEXUS only and one which is CANPASS only (see Annex C for list)
  - If a CBSA officer is not waiting to meet the boat at the reported estimated time of arrival or actual time of arrival (whichever is later), the boat may then proceed to the final Canadian destination.
- Telephone Reporting process for non-Trusted Traveller Program boaters:
  - Private boaters must go directly to one of the 405 designated Telephone Reporting Sites/Marine and follow the instructions posted on location to contact the Telephone Reporting Centre (TRC) and request clearance to enter Canada. Only the owner/operator may leave the boat to place the call to the TRC
  - The boat with all persons on board shall remain at the point of arrival until otherwise notified by the TRC or a CBSA verification officer
- TRC Passages (2015-2016)\*:
  - CANPASS Air – 123
  - Private Boats – 650

\*Source – Consolidated Management Reporting System



## ANNEX C

### IMPACTED CANPASS MARINAS

#### 23 CANPASS Private Boat impacted marinas:

##### British Columbia (10)

Cabbage Island, Ganges, Hortons Bay, Miners Bay, Montague Harbour, Port Browning, Royal Vancouver Yacht Club Scott Point Outstation, Saltspring RVYC Outstation, Steveston Harbour Authority, and Townsite Marina.

##### New Brunswick (9)

Bayside Wharf, Fairhaven Wharf, Lord's Cove Wharf, North Road Wharf, Royal Kennebecasis Yacht Club, Saint John Marina, Saint John Power Boat, Seal Cove Wharf, and Stuart Town Wharf.

##### Nova Scotia (2)

Parker-Eakins Wharf and Yarmouth Ferry Terminal.

##### Ontario (2)

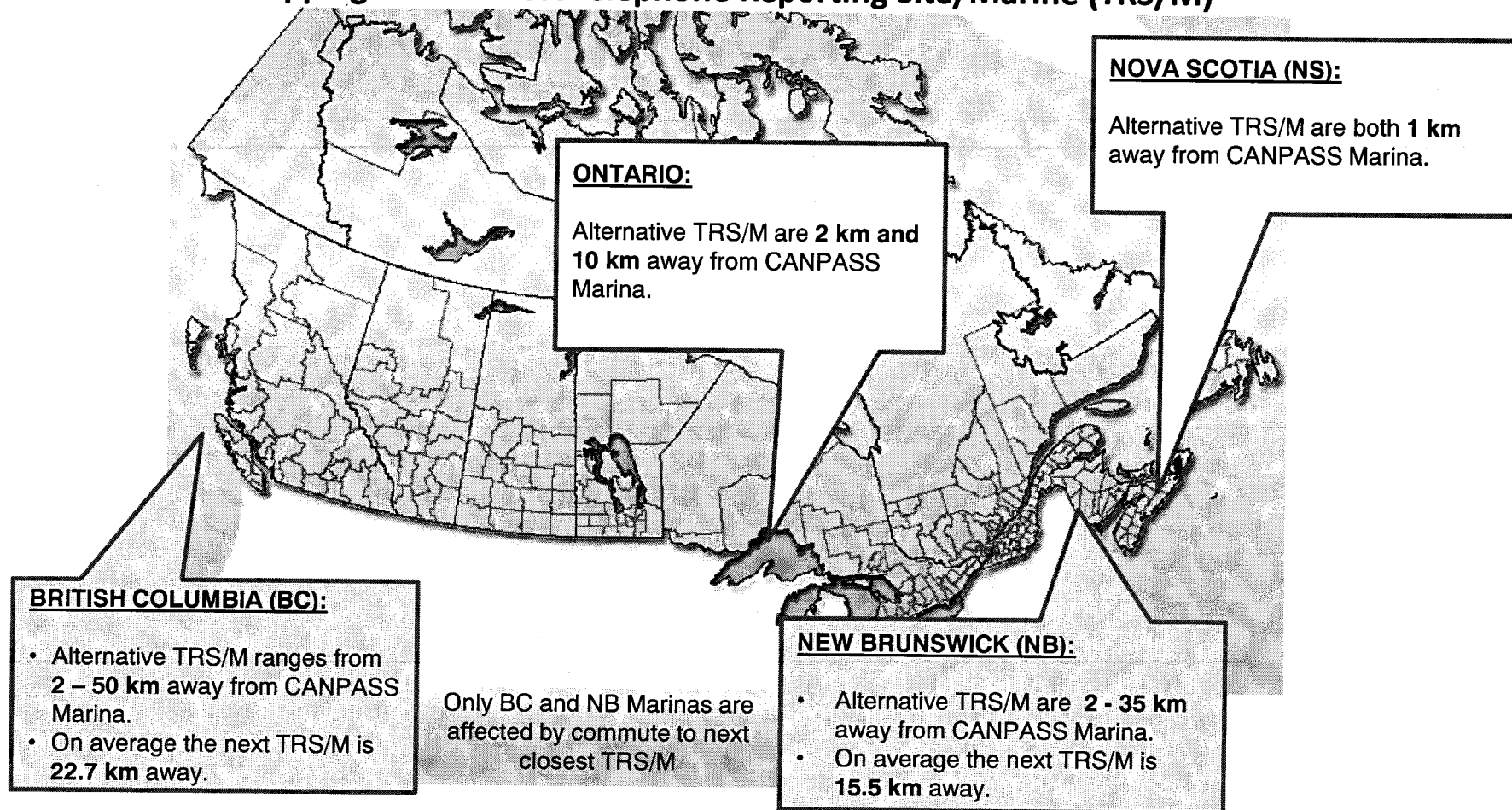
Black Creek and Canada Club Basset Island.

Note: With the exception of Yarmouth Ferry Terminal, Nova Scotia that is CANPASS only, all are also NEXUS sites.



## ANNEX D

### Mapping Next Closest Telephone Reporting Site/Marine (TRS/M)





# PROPOSED STRATEGY FOR THE CANPASS AIR & PRIVATE BOATS PROGRAMS

Questions?

## Possible Policy Impacts of U.S. Executive Orders on Bill C-23

### Executive Order: Enhancing Public Safety in the Interior of the United States

Section of Concern: "Sec. 14. *Privacy Act*. Agencies shall, to the extent consistent with applicable law, ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information."

#### Potential impacts:

##### 1. *Public perception:*

- There are media articles highlighting the loss of privacy for Canadians with regards to this Executive Order but they did not mention preclearance. However, general privacy concerns might be raised with respect to U.S. information collection and sharing with respect to the preclearance scheme (either in the media or at committee).
- Biometrics: Although the LRMA and Bill C-23 permits the U.S. to collect biometric information in a preclearance area in Canada, the U.S. currently has a policy that excludes Canadians from biometric data collection. Should the U.S. start collecting biometric data from Canadians, this reduction in privacy protections could raise public concern.

##### 2. *Privacy Impact Assessment (PIA):*

- LRMA includes new vetting processes where derogatory information will be received and shared with the U.S. for vetting employees with access to the preclearance area.
- Application of this EO may become a consideration for the Privacy Commissioner when completing the PIA.

### Executive Order: Protecting the Nation from Foreign Terrorist Entry into the U.S.

This Executive Order will:

- Suspend entry into the U.S., as immigrants and nonimmigrants, for 90 days, persons from Iraq, Iran, Libya, Somalia, Sudan, Syria and Yemen.
- Suspend all refugee admissions for 120 days (4 months) and indefinitely suspend all refugee admissions from Syrian nationals. During the 120 days, U.S. departments are to review the refugee processes which could include more permanent exclusion of refugees from certain countries.

#### Potential impacts:

##### 1. *Public perception:*



- *Part I (U.S. preclearance officers in Canada administering U.S. law informed by the Executive Order)*
  - Legal groups had planned have a presence at major airports in Canada with preclearance facilities (i.e. Toronto, Montreal, Vancouver and Ottawa) to provide information to affected travelers. However, the airports have reported that only a small group of lawyers showed up and because there are such a small number of affected travellers they have stopped visiting the airports.
  - Netherlands cancelled preclearance negotiations with the U.S. after this EO was introduced.
  - St. Maarten indicated that they will continue preclearance negotiations with the U.S.
  - Ireland publicly launched a review of preclearance. Following the review, their Attorney General stated that neither the Irish Constitution nor the courts had any authority whatsoever over decisions made by U.S. immigration officials in Dublin and Shannon airports. As a result of this advice, the Irish Parliament has since stated that they will continue with preclearance, although it is anticipated that the Irish Prime Minister will be raising the issue with President Trump during his upcoming visit to the Whitehouse in March 2017.

## 2. *Legal Considerations:*

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### Part II of Bill C-23:

- No immediate policy or operational impacts related to Part II of Bill C-23 however public perception could impact concerns raised during Parliamentary Committee
1. *Operational and policy considerations could be raised should Bill C-23 go to Committee while this Executive Order is still in effect.*
    - Canadian lawyers have already raised their concerns with Canada's approach to dealing with foreign nationals, permanent residents, and refugees under Part II of Bill C-23.
    - If CBSA did establish preclearance operations in the U.S., the Executive Order could impact decisions regarding admissibility:
      - For any travellers, if the CBSA preclearance officer suspects the traveller has committed an offence in the U.S., or poses a significant risk to public health, the traveller would be detained and transferred to U.S. authorities.
- ?
- Additional impacts may apply for refugees, permanent residents (PR) and foreign nationals:
    - Claims for refugee protection cannot be made in Canadian preclearance sites in the U.S. (travelers attempting to claim refugee status could pursue their claim with a U.S. official or at a normal Canadian port of entry).
    - Bill C-23 allows CBSA preclearance officers with the authority to refuse preclearance to non-citizens because the LRMA (and subsequently Bill C-23) does not provide CBSA officers with immigration detention



authorities (for PRs the threshold for refusal is most serious grounds and for foreign nationals it is any grounds for admissibility under IRPA)

- For the above travelers, if they are refused entry, it is possible that U.S. authorities would be notified, which could result in the traveller being detained or possibly deported if they are a refugee or a person from a listed country. The risk is particularly elevated at airports where the practice for withdrawing travellers is to have them escorted by a Host Party Inspection Agency officer.

### Key Considerations

- The U.S. has recognized Canadian permanent residents holding valid U.S. visas as admissible to the U.S.
- For refugees and foreign nationals, it is unlikely that a refugee or a person from a listed country would be able to present themselves at a Canadian preclearance site in the U.S. as the person would either have to already be in the U.S. illegally or have been located in the U.S. prior to a ban being implemented.

DRAFT

## Executive Orders

### Implications for Inadmissibility of Permanent Residents and Foreign Nationals

The implications for foreign nationals or permanent residents who are refused in preclearance are dependent on the existing information sharing agreement between the US and Canada as well as the information sharing provisions in the Bill.

Under the existing Statement of Mutual Understanding (SMU) between Canada and the US, immigration information can be disclosed upon request, or proactively, can only be exchanged between designated officers, and can only be shared for immigration purposes, including the enforcement of immigration and citizenship laws in either country.

Following discussions with Public Safety and Immigration, Refugees and Citizenship Canada, it was confirmed that the existing Canada-US SMU could be used for case-by-case information sharing for immigration purposes, which includes immigration enforcement, between the CBSA and the Department of Homeland Security (DHS) portfolio - which includes US Customs and Border Protection - in a preclearance area.

Section 14 of the US Executive Order, "Enhancing Public Safety in the Interior of the United States," allows that "Agencies shall, to the extent consistent with applicable law, ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information."

Under the Preclearance Bill, Canada is under no obligation to share information with the US if the refusal does not relate to the security and control of the border or the detention and delivery of travellers. Under the spirit of the SMU, Canada would be expected to share immigration information with the US on refusals in order to ensure the integrity of the immigration and citizenship laws in the US.

#### Permanent Residents

Currently, at the port of entry, permanent residents have the right to enter and remain in Canada, subject to the provisions of the IRPA. The Bill gives authority to refuse to permit entrance to permanent residents in prescribed circumstances, which will be established in regulations.

Unlike citizens, permanent residents do not have a right under the *Canadian Charter of Rights and Freedoms* to enter Canada. They only have a statutory right to enter Canada subject to the provisions of the IRPA. The Bill would limit that statutory right for those permanent residents in a preclearance area who are inadmissible for the most serious grounds.

If a permanent resident is refused under the most serious grounds, in all likelihood, they would also be reasonably suspected to present a danger to human life or safety or have committed an offence under US law. As a result, such a PR would likely already have been detained by US authorities prior to arriving in a preclearance area. If not, then they would be detained and transferred to the US.

Even in the case of a strong pre-existing connection to Canada (e.g., citizenship or permanent residence) and the potential risk of facing the death penalty or deportation from US, it is unlikely that there would a successful *Charter* challenge.

#### Foreign Nationals

Under the new Bill, a resettled refugee with a permanent resident visa could be refused entry to Canada if, for example, new information relating to inadmissibility comes to light after the visa is issued. However, it would be rare that such a situation would occur in preclearance. Should this be a concern, it would be possible for the Minister to decide that permanent resident status may not be granted in preclearance and that permanent resident visa holders would need to be "landed" at a regular port of entry.

Protected persons are also subject to be refused in preclearance for serious grounds and, similar to a permanent resident or resettled refugee who is found inadmissible under serious grounds, would in all likelihood be reasonably suspected to present a danger to human life or safety or have committed an offence under US law. As a result, such a person would likely already have been detained by US authorities prior to arriving in a preclearance area. If not, then they would be detained and transferred to the US.

<b>US Executive Orders</b> <b>Ordres exécutifs des États-Unis</b>	
<b>CBSA Situation Report   Rapport de situation de l'ASFC</b>	
<b>February 2, 2017   Le 2 février 2017</b> <b>13:00 ET / HE</b>	

The purpose of this situation report is to provide an overview of activities/events related to the Executive Order (Protection of the Nation from Foreign Terrorist Entry into the United States) issued by the President of the United States.

Le but de ce rapport de situation est de fournir un aperçu des activités/événements liés aux ordres exécutifs (Protéger la nation contre l'entrée des terroristes étrangers aux États-Unis) émis par le président des États-Unis.

**NOTICE | AVIS**

**Subject: Canadian Landed Immigrants and Executive Order "Protecting the Nation from Foreign Terrorist Entry into the United States"**

Effective immediately, Canadian Landed Immigrants that are citizens of Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen with a valid U.S. Visa may be considered for an exemption of the 212(f) bar under Section 3(g) of the President's Executive Order if and only if the person satisfies the following conditions:

1. Proof to the satisfaction of the inspection Officer of person's Landed Immigrant Status in Canada;
2. Possession of a valid U.S. visa;
3. Travel that originates in Canada;
4. From only a pre-clearance airport; or
5. Applying for admission at a land border port of entry;
6. And the applicant is otherwise admissible.

The admission of such individuals must be in the national interest of the United States. Prior to any such admission, each individual must be subjected to a thorough examination by an immigration officer, to include CBP conduct of:

Each exemption must be considered on a case by case basis with waiver submitted to Commissioner of CBP.

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**Objet: Immigrants établies au Canada et l'ordre exécutif " Protéger la nation contre l'entrée des terroristes étrangers aux États-Unis"**

Les immigrants établis au Canada qui sont citoyens de l'Iran, de l'Irak, de la Libye, de la Somalie, du Soudan, de la Syrie et du Yémen et qui ont un visa américain valide, peuvent être considérés comme exempt du barème 212(f), article 3(g) de l'ordre exécutif émis, si et seulement si la personne satisfait les conditions suivantes :

1. Faire preuve de statut d'immigrant établi au Canada, et ce, à la satisfaction de l'agent d'inspection;
2. Être en possession d'un visa américain valide;
3. Le voyage a débuté au Canada;
4. Être en provenance uniquement d'un aéroport de précontrôle; ou
5. Qui fait demande d'admissions à un point d'entrée terrestre;
6. Et que la personne faisant la demande soit par ailleurs admissible.

L'admission de ces personnes doit être conduite selon l'intérêt national des États-Unis. Avant chaque admission, ces personnes seront soumises à un examen minutieux, et ce, par un agent d'immigration, afin d'inclure la conduite du CBP:

Chaque exonération doit être considérée au cas par cas avec une renonciation présentée au Commissaire du CBP.

## INTERNATIONAL | INTERNATIONAL

### *Daily Update / Mise à jour quotidienne*

#### **Overall impacts**

- No impact on CBSA international operations.

#### **Americas**

##### Washington

- Ongoing interaction with CBP International Affairs to seek clarity on implementation of the Executive Order.
- Ongoing interaction with key domestic partners and other government departments at mission.

##### Los Angeles

- The San Diego Trade Office reported that an Iranian Canadian resident flew to San Diego to take up a tech job, but was denied entry.

#### **Europe/Africa/Middle East**

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Asia/Pacific

PORT OF ENTRY PROCESSING | TRAITEMENT DES PORTS D'ENTRÉE

**Enforcement / Exécution de la loi:**

Refugee Claims since the Executive Order was imposed. / Nombre de demandes de statut de réfugié depuis l'exécution de l'ordonnance.

Regions / Régions		Daily Claims Demandes quotidiennes	Total (Since January 29, 2017) Total (depuis le 29 janvier 2017)
	ATL	0	0
	QC	26	101
	NOR	0	0
	GTA	0	0
	SOR	12	30
	PRA	0	0
	PAC	1	6
CBSA Total / Total de l'ASFC		39	137

\*Not all issues outlined above have been confirmed as being directly attributable to the Executive Order issued on January 28, 2017. / L'ensemble des résultats soulevés ci-dessous n'a pas été confirmé comme étant directement attribuable à l'ordre exécutif du 28 janvier 2017

Number of individuals refused entry by the US. / Nombre d'individus refusés par les États-Unis.

Regions / Régions		Land	Air - In Transit	Total (Since January 29, 2017) Total (depuis le 29 janvier 2017)
	ATL	0	2	2
	QC	0	0	0

NOR	0	0	0
GTA	0	1	2
SOR	4	0	16
PRA	0	0	0
PAC	0	0	0
<b>Total / Total</b>	<b>4</b>	<b>3</b>	<b>20</b>

### Facilitation / Facilitation:

Facilitation Permits issued since the Executive Order was imposed. / Nombre de permis de facilitation émis depuis l'exécution de l'ordonnance.

Facilitation	Region / Région	Daily Permits Issued Permis émis quotidiennement	Total (Since January 29, 2017) Total (depuis le 29 janvier 2017)
Visitor Records / Fiches de visiteur	ATL	0	0
	QC	0	0
	NOR	0	0
	GTA	0	0
	SOR	0	0
	PRA	0	0
	PAC	0	0
<b>Total Visitor Records / Fiches de visiteur total</b>			<b>0</b>
Work Permits / Permis de travail	ATL	0	0
	QC	0	0
	NOR	0	0
	GTA	0	0
	SOR	0	0
	PRA	0	0
	PAC	0	0
<b>Total Work Permits / Permis de travail total</b>			<b>0</b>
Temporary Resident Permits (TRP) / Permis de résident temporaire (PRT)	ATL	0	0
	QC	0	0
	NOR	0	0
	GTA	0	0
	SOR	0	1
	PRA	0	0
	PAC	0	0
<b>Total TRPs / PRT total</b>		<b>0</b>	<b>1</b>

### Cases of Interest / Cas d'intérêts:

#### GTA

- One Canadian PR/Iranian national travelling with a US Immigrant visa in his Iranian passport and transiting through Terminal 1 was refused entry to the US. "Refused due to executive order" was written on his visa.
- The NEXUS Enrollment Centre was informed by a CDN Permanent Resident who is a citizen of Iran and NEXUS cardholder that they received an e-mail yesterday via their GOES account informing him that his NEXUS membership had been cancelled. No explanation was given for the cancellation in the e-mail. ICS indicates that it was cancelled on Feb 2, 2017 by USCBP. The USCBP officer informed the client that it was because of the current executive order issued by the US. This client will unfortunately have to re-apply as he has become a CDN Citizen, but never updated his citizenship.

### **Atlantic**

- 0400 Virgin Airlines Flight VS2 787dreamliner from Newark, USA to London, Heathrow landed at St John's International Airport (YYT) due to medical emergency. At approximately 8:00am all passengers began to clear through PIL. 2 passengers with UK passports, COB Pakistan told Officer CLIFT that they had gone to the USA for a vacation however they spent only 1 day in the USA due to circumstances out of their control.

### **SOR**

- One Refugee Claim at the Fort Erie Processing Unit was determined ineligible on February 1, 2017 under Safe Third whose citizenship does not fall under one of the seven countries. The country of citizenship is Haiti.
- We have seen a total of 43 individuals since January 27, 2017 refused entry by the US under the new EO.

### **Pacific**

- Lone Syrian national male seeking entry via Quick Bus claimed asylum at the Primary Inspection Line. Subject provided documents indicating a removal order from the United States (US) and a rejected refugee claim in the US. On this date, subject claimed protection against Syria and the US. MD found subject is not eligible for Refugee Claim in Canada, due to the Safe Third Agreement. Subject is not eligible for any exemptions, nor any exceptions to the Safe Third Agreement. Exclusion order issued and subject was walked back to the US. Removal Order enforced without incident and US CBP accepted the return of the subject.

### **Border Operations**

Border Operations NHQ is closely monitoring this situation for any changes to travel patterns or potential refugee surges.

## **INLAND ENFORCEMENT | OPÉRATIONS DE L'EXÉCUTION DE LA LOI DANS LES BUREAUX INTÉRIEURS**

### *Daily Update / Mise à jour quotidienne*

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Ces renseignements sont classifiés Protégé A. Pour distribution interne à l'ASFC seulement. Si vous avez des questions ou désirez faire un suivi de demandes de renseignements détaillés, veuillez communiquer avec la Direction des opérations frontalières.



<b>US Executive Orders</b> <b>Ordres exécutifs des États-Unis</b>		
<b>CBSA Situation Report   Rapport de situation de l'ASFC</b>		
<b>February 14, 2017   Le 14 février 2017</b> <b>14:00 ET / HE</b>		

The purpose of this situation report is to provide an overview of activities/events related to the Executive Order (Protection of the Nation from Foreign Terrorist Entry into the United States) issued by the President of the United States.

Le but de ce rapport de situation est de fournir un aperçu des activités/événements liés aux ordres exécutifs (Protéger la nation contre l'entrée des terroristes étrangers aux États-Unis) émis par le président des États-Unis.

#### INTERNATIONAL | INTERNATIONAL

##### International Region

- No impact on CBSA international operations.

##### Americas - Europe / Middle East / Africa - Asia / Pacific

- No significant issues to report.

#### PORT OF ENTRY PROCESSING | TRAITEMENT DES PORTS D'ENTRÉE

##### Enforcement / Exécution de la loi:

Refugee Claims since the Executive Order was imposed. / Nombre de demandes de statut de réfugié depuis l'exécution de l'ordonnance.

Regions / Régions		Daily Claims Demandes quotidiennes	Total (Since January 29, 2017) Total (depuis le 29 janvier 2017)
ATL		0	0
QC		22	295
NOR		N/A	2
GTA		4	114
SOR		23	221
PRA		21	41
PAC		0	11
<b>CBSA Total / Total de l'ASFC</b>		<b>70</b>	<b>684</b>

\*Not all issues outlined above have been confirmed as being directly attributable to the Executive Order issued on January 28, 2017. / L'ensemble des résultats soulevés ci-dessous n'a pas été confirmé comme étant directement attribuable à l'ordre exécutif du 28 janvier 2017

Number of individuals refused entry by the US. / Nombre d'individus refusés par les États-Unis.

Regions / Régions	Land	On-Going Transit	Total (Since January 29, 2017) Total (depuis le 29 janvier 2017)
ATL	0	0	2
QC	0	0	2
NOR	N/A	N/A	0
GTA	0	0	2
SOR	0	0	17
PRA	0	0	0
PAC	0	0	0
<b>Total / Total</b>	<b>0</b>	<b>0</b>	<b>23</b>

### Facilitation / Facilitation:

Facilitation Permits issued since the Executive Order was imposed. / Nombre de permis de facilitation émis depuis l'exécution de l'ordonnance.

Facilitation	Region / Région	Daily Permits Issued Permis émis quotidiennement	Total (Since January 29, 2017) Total (depuis le 29 janvier 2017)
Visitor Records / Fiches de visiteur	ATL	0	0
	QC	0	0
	NOR	N/A	0
	GTA	0	0
	SOR	0	0
	PRA	0	0
	PAC	0	0
<b>Total Visitor Records / Fiches de visiteur total</b>		<b>0</b>	<b>0</b>
Work Permits / Permis de travail	ATL	0	0
	QC	0	0
	NOR	N/A	0
	GTA	0	0
	SOR	0	0
	PRA	0	0
	PAC	0	0
<b>Total Work Permits / Permis de travail total</b>		<b>0</b>	<b>0</b>
Temporary Resident Permits (TRP) / Permis de résident temporaire (PRT)	ATL	0	0
	QC	0	0
	NOR	N/A	0
	GTA	0	0
	SOR	0	1
	PRA	0	0
	PAC	0	0
<b>Total TRPs / PRT total</b>		<b>0</b>	<b>1</b>

### Cases of Interest / Cas d'intérêts:

### Border Operations

Border Operations NHQ is closely monitoring this situation for any changes to travel patterns or potential refugee surges.

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<b>US Executive Orders Ordres exécutifs des États-Unis</b>
<b>CBSA Situation Report   Rapport de situation de l'ASFC</b>
<b>February 1, 2017   Le 1 février 2017 13:00 ET / HE</b>

The purpose of this situation report is to provide an overview of activities/events related to the Executive Order (Protection of the Nation from Foreign Terrorist Entry into the United States) issued by the President of the United States.

Le but de ce rapport de situation est de fournir un aperçu des activités/événements liés aux ordres exécutifs (la protection de la nation contre l'entrée des terroristes étrangers aux États-Unis) émis par le président des États-Unis.

#### **NOTICE | AVIS**

Please be advised of the following notice posted to IRCC's website:

Special Measures for Foreign Nationals Affected by the U.S. Executive Order: "Protecting the Nation from Foreign Terrorist Entry into the United States"

<http://www.cic.gc.ca/english/departement/media/notices/2017-01-31.asp>

Veuillez noter que l'avis ci-dessous a été affiché sur le site web d'IRCC.

Avis – Mesures spéciales à l'intention des ressortissants étrangers touchés par le décret américain intitulé « Protecting the Nation from Foreign Terrorist Entry into the United States »

<http://www.cic.gc.ca/francais/ministere/media/avis/2017-01-31.asp>

#### **INTERNATIONAL | INTERNATIONAL**

##### *Daily Update / Mise à jour quotidienne*

##### **Overall impacts**

- Offloads are not impacting Canadian flights
- There has been no changes to airline call volumes other than normal day to day activities
- US based Liaison Officers (LOs) noted that some protests continue at airports and various locations in the USA
- Other Government Departments (OGDs) partners at Canadian Missions in the US, in particular Washington DC and New York, are looking to CBSA for guidance and clarification on the impacts of the Executive Order (EO)

##### **Americas**

##### **Washington**

- Ongoing interactions with CBP International Affairs to seek clarity on the implementation of the EO
- Ongoing interactions with key domestic partners and OGDs

#### New York

- The Deputy Head of Mission and Trade Section have received calls from some members of the business community who wanted to know if Canada would increase immigration as well as full assurances that there is of no issues for traveling for Canadian Citizens and Permanent Residents
- All mission partners, including CBSA, have been asked to continue to feed in and share as much information as possible.

#### Los Angeles

- The LO advised that a well-known lawyer working with detained passengers at Los Angeles International Airport contacting the Canadian Consulate in LA and inquired about buying tickets for their clients to fly to Canada instead of the US. The matter was referred to Immigration at the mission.

#### Miami

- Nil

#### Europe/Africa/Middle East

- LO Istanbul reported that Turkish Airlines has offloaded 58 people over four days due to the EO.
- LO Rome reported that a US colleague at the US Embassy in Rome has advised that dual nationals (Canadian and citizenship in one of seven countries identified) require a US visa in their Canadian passport to enter the US. Otherwise, they will have to prove that they do not have citizenship in the other country. Canadians do not require an ESTA (electronic system for travel authorization) to enter the US; it is unclear how this will apply to Canadians.

#### Asia/Pacific

- No issues to report

### PORT OF ENTRY PROCESSING | TRAITEMENT DES PORTS D'ENTRÉE

#### Enforcement / Exécution de la loi:

Refugee Claims since the Executive Order was imposed. / Nombre de demandes de statut de réfugié depuis l'exécution de l'ordonnance.

Regions / Régions		Daily Claims Demandes quotidiennes	Total (Since January 29, 2017) Total (depuis le 29 janvier 2017)
	ATL	0	0
	QC	1	70
	NOR	0	0
	GTA	0	0
	SOR	13	18
	PRA	0	0
	PAC	5	5
CBSA Total / Total de l'ASFC		19	93

\*Not all issues outlined above have been confirmed as being directly attributable to the Executive Order issued on January 28, 2017. / L'ensemble des résultats soulevés ci-dessous n'a pas été confirmé comme étant directement attribuable à l'ordre exécutif du 28 janvier 2017

Number of individuals refused entry by the US. / Nombre d'individus refusés par les États-Unis.

Regions / Régions	Land	Air – In Transit	Total (Since January 29, 2017) Total (depuis le 29 janvier 2017)
ATL	0	0	0
QC	0	0	0
NOR	0	0	0
GTA	0	0	0
SOR	3	0	12
PRA	0	0	0
PAC	0	0	0
<b>Total / Total</b>	<b>3</b>	<b>0</b>	<b>12</b>

### Facilitation / Facilitation:

Facilitation Permits issued since the Executive Order was imposed. / Nombre de permis de facilitation émis depuis l'exécution de l'ordonnance.

Facilitation	Region / Région	Daily Permits Issued Permis émis quotidiennement	Total (Since January 29, 2017) Total (depuis le 29 janvier 2017)
<b>Visitor Records / Fiches de visiteur</b>	ATL	0	0
	QC	0	0
	NOR	0	0
	GTA	0	0
	SOR	0	0
	PRA	0	0
	PAC	0	0
<b>Total Visitor Records / Fiches de visiteur total</b>		<b>0</b>	<b>0</b>
<b>Work Permits / Permis de travail</b>	ATL	0	0
	QC	0	0
	NOR	0	0
	GTA	0	0
	SOR	0	0
	PRA	0	0
	PAC	0	0
<b>Total Work Permits / Permis de travail total</b>		<b>0</b>	<b>0</b>
<b>Temporary Resident Permits (TRP) / Permis de résident temporaire (PRT)</b>	ATL	0	0
	QC	0	0
	NOR	0	0
	GTA	0	0
	SOR	0	1
	PRA	0	0
	PAC	0	0
<b>Total TRPs / PRT total</b>		<b>0</b>	<b>1</b>

### Cases of Interest / Cas d'intérêts:

#### SOR

- One Refugee Claim at the Rainbow Bridge was determined ineligible on January 31, 2017 under Safe Third whose citizenship falls under one of the seven countries, namely Syria.

- There were 3 US refusals of Canadian affected by the EO in SOR. Two Canadian Permanent Residents, Fort Erie Peace Bridge 1, Windsor Tunnel 1, and one Canadian Refugee whose US visa was cancelled pursuant to section 212(F) of INA at the Sarnia Blue Water Bridge.

### **GTA**

- Last night at Terminal 1, a permanent resident of Canada, citizen of Iran, had his US visa revoked as per executive order. The individual was attempting to travel from Toronto to Boston, was refused entry by CBP and escorted to the CBSA area. The individual was granted entry as a Canadian Permanent Resident.

### **PAC**

#### **Vancouver International Airport**

- Family of five (Four Turkish Nationals and one US born child) made a claim for refugee protection after spending 10 days in the US. The family stated that their original intention was to make a claim for refugee protection in the US, but did not as they were afraid of Trump's policies.

#### **Calls at Nexus:**

- Iraq-born Canadian citizen (NEXUS member) travelling for business in the US.
- Iraq-born Canadian Permanent Resident (PR) (NEXUS member) asking about travelling into the US by air.
- Iran-born Canadian PR (NEXUS member) asking about travelling for business into the US.
- Iran-born Canadian citizen (NEXUS member), wanted assurance he could travel to US by land.
- Non-NEXUS member Iraq-born Canadian PR wanted assurance he could travel to US by land.
- Malaysian female (NEXUS member) with PR status in Canada and a visa to enter the US, asking if she was still allowed to travel in the US.

### **Border Operations**

Border Operations NHQ is closely monitoring this situation for any changes to travel patterns or potential refugee surges.

## **INLAND ENFORCEMENT | OPÉRATIONS DE L'EXÉCUTION DE LA LOI DANS LES BUREAUX INTÉRIEURS**

### ***Daily Update / Mise à jour quotidienne***

This information is classified Protected A. Only for distribution internal to the CBSA. If you have any questions or follow up requests for detailed information, please contact the Border Operations Directorate.

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<b>US Executive Orders – CBSA Status report</b>
<b>Situation Report   Rapport de situation</b>
<b>January 29, 2017 13 :09</b>

*This Situation Report is produced the Communications Directorate with statistical information provided by the Operations Branch*

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## BACKGROUND | CONTEXTE

Late on Friday afternoon, the US President signed an executive order (EO) on "Protection Of The Nation From Foreign Terrorist Entry Into The United States", which is expected to make a number of significant changes to refugee resettlement and visa policy. Under the Immigration and Naturalization Act, paragraph 212(f) the President enjoys a wide authority "to suspend the entry of all aliens or any class of aliens as immigrants or non-immigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate". At time of writing, the EO is still not officially posted on the White House website.

The Executive Order: Invoking this authority, President's EO details a number of measures identified to protect Americans from foreign nationals who intend to commit terrorist acts. These include:

- Ordering a review that would lead to the suspension of visa and other immigration benefits to nationals of countries of particular concern, which include Iraq, Iran, Libya, Somalia, Sudan, Syria and Yemen.
  - This country list is the same as the countries from which dual nationals were no longer eligible for consideration under the Visa Waiver Program that were put in place in 2016 under the Obama Administration.
- Ordering the suspension of all refugee admissions for 120 days (4 months) and suspending indefinitely all refugee admissions from Syrian nationals.
- Ordering a reduction in the number of refugees allowed into the US this fiscal year to 50,000 (from the 110,000 goal previously set by the Obama administration).
- Rescinds authorities for exemptions to overcome existing Terrorism Grounds of Inadmissibility (TRIG) and the waiver of interviews; as these do not represent significant volumes, their anticipated impact is limited.

The draft Executive Order also encompasses the expedited completion of a long-standing congressionally-mandated Biometric Entry-Exit Tracking System that would require the use of biometrics data collection for all travellers upon entry and exit to the US, and would include both US and Canadian nationals.

As of early Saturday January 28, the CBSA in the national capital region and in various regions across the country, has received a number of media calls on this subject – namely what, if anything, the CBSA had to say on this and if the CBSA had noticed an increase in traveller volumes and refugee claimants from the areas covered in the Executive Order (EO).

## Port of entry traveller volumes

### Reporting for noon at POEs on impacts from EO – Traveller volumes:

**Atlantic Region:** no (unusual) border wait times reported



**Quebec Region:** no (unusual) border wait times reported  
**Northern Ontario Region:** no (unusual) border wait times reported  
**Greater Toronto Area Region:** no (unusual) border wait times reported  
**Southern Ontario Region:** no (unusual) border wait times reported  
**Prairie Region:** no (unusual) border wait times reported  
**Pacific Region:** no (unusual) border wait times reported

#### **Port of entry refugee claims and other immigration related issues**

##### **Atlantic Region:**

- NIL report

##### **Quebec Region:**

- **Lacolle** port of entry: as of January 28, 2017, 28 refugee claims made
- **Aéroport International Pierre-Elliott-Trudeau:** two instances of US returns
  - One was Canadian PR, therefore admissible to Canada
  - The other was a family of four of Yemeni origin. They were/are US green card holders and were facilitated by the CBSA.

##### **Northern Ontario Region:**

- NIL report

##### **Greater Toronto Area Region:**

- No issues with in-transit passengers
- Those refused entry to US are/were domestic travellers (within Canada) so no CBSA involvement

##### **Prairie Region:**

- Two refusals for in-transit passengers reported January 28, 2017 – both were facilitated by the CBSA
- **POE Carway:** an Iranian national was given an administrative refusal to US
- **Calgary International Airport:** reporting a Canadian PR travelling on Iranian passport was denied entry to US despite being issued two previous visas to the U.S

##### **Pacific Region:**

- Temporary residents in Canada were unable to return to the U.S. due to the 90 day Executive Order
- Pacific Highway district ports of entry: 11 individuals were refused entry to the US

## **Public Safety Assessment on Impacts of U.S. Executive Orders on Bill C-23**

### **Executive Order: Enhancing Public Safety in the Interior of the United States**

Section of Concern: "Sec. 14. *Privacy Act*. Agencies shall, to the extent consistent with applicable law, ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information."

#### **LRMA: Possible Elevated *Charter* Risk (Section 8)**

The LRMA allows for the U.S., in the course of determining admissibility, to collect biometric data from all persons in a preclearance area. However, to date, the U.S. has had a policy that excluded Canadians from biometric data collection. Should the U.S. start collecting biometric data from Canadians, the lack of *Privacy Act* protections could elevate the *Charter* risk.

Public Perception: There are media articles highlighting the loss of privacy for Canadian in regards to this Executive Order. To date, no media articles have made a link to preclearance. However, the issue could be raised at committee.

### **Executive Order: Protecting the Nation from Foreign Terrorist Entry into the U.S.**

This Executive Order will:

- Suspend entry into the U.S., as immigrants and nonimmigrants, for 90 days, persons from Iraq, Iran, Libya, Somalia, Sudan, Syria and Yemen.
- Suspend all refugee admissions for 120 days (4 months) and indefinitely suspend all refugee admissions from Syrian nationals. During the 120 days, U.S. departments are to review the refugee processes which could include more permanent exclusion of refugees from certain countries.

#### **Part I of Bill C-23: Possible *Charter* Risk (Section 15) and Heightened Public Concern**

During a review of preclearance in Ireland, the Irish Attorney General stated that neither the Irish Constitution nor the courts had any authority whatsoever over decisions made by U.S. immigration officials in Dublin and Shannon airports.

Public perception: Protests are planned at three preclearance sites in Canada (Toronto, Montreal and Ottawa). Lawyers and law students are planning to attend each airport to offer legal assistance to any travelers denied entry. There is a possibility that these concerns could be raised at committee by the Canadian Bar Association.

## Part II of Bill C-23: No Immediate Operational Impacts but Possible Public Concerns

It is important to note that there are currently no Canadian preclearance sites established in the U.S. As such, the below assessments are hypothetical and are based on an assumption that the current suspensions would remain in place until such a time as the CBSA begins operations in the U.S. Nevertheless, the below concerns could be raised by members of the public should Bill C-23 go to committee while this Executive Order is still in effect.

The Executive Order could impact decisions regarding admissibility:

- For any travellers, if the CBSA preclearance officer suspects the traveller has committed an offence in the U.S., or poses a significant risk to public health, the traveller would be detained and transferred to U.S. authorities.
- Additional impacts exist for refugees, permanent residents (PR) and foreign nationals:
  - Claims for refugee protection cannot be made in Canadian preclearance sites in the U.S. (travellers attempting to claim refugee status could pursue their claim with a U.S. official or at a regular normal Canadian port of entry).
  - Bill C-23 allows CBSA preclearance officers with the authority to refuse preclearance to non-citizens because the LRMA (and subsequently Bill C-23) does not provide CBSA officers with immigration detention authorities.

~~(For PRs, resettled refugees and protected persons the threshold for refusal is most serious grounds and for foreign nationals (excluding resettled refugees and protected persons), it is any grounds of inadmissibility under IRPA.)~~

- For the above travellers, if they are refused entry, it is possible that U.S. authorities would be notified, which could result in the traveller being detained or possibly deported if they are attempting to make a refugee claim, or are a non-Canadian with citizenship person from a listed country. The risk is particularly elevated at airports where the practice for withdrawing travellers is to have them escorted by a Host Party Inspection Agency officer.

**Commented [LL1]:** The threshold for refusal for FNs is not that all FNS will be refused for any grounds under IRPA; the grounds for refusal for FNs depends into which class they fall.

Despite the above analysis, two important caveats are:

- The U.S. has recognized Canadian permanent residents holding valid U.S. visas as admissible to the U.S.
- For refugees and foreign nationals, it is unlikely that a refugee or a person from a listed country would be able to present themselves at a Canadian preclearance site in the U.S. as the person would either have to be in the U.S. illegally or have been located in the U.S. prior to a ban being implemented.

Public perception: Despite the fact that there are currently no foreseeable plans to establish Canadian preclearance in the U.S., the above concerns could be raised by members of the public should Bill C-23 go to committee while this Executive Order is still in effect. Canadian lawyers have already raised their concerns with Canada's approach to dealing with foreign nationals, permanent residents, and refugees under Part II of Bill C-23. Given the potential for increased claims at potential preclearance locations in the U.S. as a result of the Executive Order, it is anticipated that these concerns will be escalated.

Impact of Executive Order on Information Sharing with the United States			
<p><i>Sec. 14. Privacy Act. Agencies shall, to the extent consistent with applicable law, ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information.</i></p>			
Info-Sharing Agreement	Privacy Protection Mechanisms	Impact of EO	Comments
<p>Agreement between the Government of Canada and the Government of the United States of America For cooperation in the examination of refugee status claims from nationals of third countries (2004 –Treaty level-Binding)</p>	<p><b>ARTICLE 6</b>            Notwithstanding any provision of this Agreement, either Party <b>may</b> at its own discretion examine any refugee status claim made to that Party where it determines that it is in its public interest to do so.</p> <p><b>ARTICLE 7</b>            The Parties may:</p> <p>a) Exchange such information as may be necessary for the effective implementation of this Agreement subject to national laws and regulations. This information shall not be disclosed by the Party of the receiving country except in accordance with its national laws and regulations. The Parties shall seek to ensure that information is not exchanged or disclosed in such a way as to place refugee status claimants or their families at risk in their countries of origin.</p> <p>b)Exchange on a regular basis information on the laws, regulations and</p>		

	practices relating to their respective refugee status determination system.		
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	<b>? Couldn't find this MOU on Atlas or Apollo.</b>		<b>Consulted with Information Sharing and Collaborative Agreement Policy Unit.</b>

Impact of Executive Order on Information Sharing with the United States			
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Info-Sharing Agreement	Privacy Protection Mechanisms	Impact of EO	Comments




## Impact of Executive Order on Information Sharing with the United States

*Sec. 14. Privacy Act. Agencies shall, to the extent consistent with applicable law, ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information.*

Info-Sharing Agreement	Privacy Protection Mechanisms	Impact of EO	Comments
Amendments to s. 107 of the <i>Customs Act</i>			As preclearance in the U.S. is still likely a number of years away, the urgency of this concern is diminished

There are a number of existing information sharing arrangement between Canada/CBSA and the U.S. (USCBP) that may be used in the preclearance context (Agreement between the Government of Canada and the Government of the United States of America for the mutual assistance and cooperation between their customs administrations.	<ul style="list-style-type: none"> <li>· These information sharing arrangements would have provisions regarding the use and disclosure of information received under these agreements;</li> <li>· But if provisions rely on US laws and policies, this may remove the protection the above type of provisions would apply</li> </ul>	EO is not changing law, but the policies of the US agencies, so each arrangement would need to be analyzed as to what specific privacy protection gap may emerge	As preclearance in the U.S. is still likely a number of years away, the urgency of this concern is diminished

## 2016-2017 Supplementary Estimates (C) / 2017-2018 Main Estimates

### NEXUS CARD REVOCATION

#### PROPOSED RESPONSE

- We continue to work with the United States to ensure the security of the border and the efficient flow of people and goods.
- At this time, the Nexus memberships that were cancelled as a result of the Executive Order have been reinstated. This situation is subject to change, pending U.S. courts proceedings.
- The United States' Department of Homeland Security has instructed American Border Guards at all land and pre-clearance points of entry that Canadian permanent residents originally from the seven countries identified in the Executive Order are eligible to enter the US with a valid visa.
- Canadian officials are in regular contact with American authorities, and we are doing everything possible to provide timely information to Canadian travellers.
- Nexus is a discretionary trusted traveller program, and memberships are revoked for a number of reasons completely separate from the concerns raised in recent weeks. In 2015-16, an average of seven Nexus memberships were revoked daily
- People whose Nexus membership has been revoked may avail themselves of the review process that exists in both countries.

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**Backgrounder:**

NEXUS is a bi-national, Canada-United States (U.S.) program for pre-approved, low-risk travellers entering Canada or the U.S. at designated air, land and marine ports of entry. The program is operated by the Canada Border Services Agency (CBSA) and United States Customs and Border Protection (CBP). A NEXUS membership card is a valid document under the Western Hemisphere Travel Initiative.

The U.S. recently issued an Executive Order (Order) that sought to ban travel to the U.S. from nationals of these seven countries: Iran, Iraq, Syria, Yemen, Somalia, Sudan, and Libya. Initially, this ban affected NEXUS members that were Canadian permanent residents holding citizenship from these affected countries. However, officials have confirmed that all Canadian permanent residents who had their NEXUS membership cancelled, due to the recent Order, have been reinstated.

It is noteworthy that the CBSA and CBP each make an independent determination for membership cancellation and revocation.

Possible reasons for revocation by the CBSA include:

- Not meeting the eligibility criteria
  - Being inadmissible to Canada under the *Immigration and Refugee Protection Act* and its regulations.
  - Not meeting the residency requirement(s) of the program.
  - Being convicted of a criminal offence and not having received a pardon/record suspension.
  - Contravention of customs and/or immigration program legislation
- Violating the terms and conditions of the membership

CBP will have similar reasons to revoke a membership based on their domestic legislation.

In the event of a revocation, the client will be notified in writing by the respective agency along with the process for appealing the decision. In the event a client is revoked by both the CBSA and CBP, the client can appeal the decision to each agency separately.

For a CBSA-based revocation, the client can submit an appeal to the CBSA's Recourse Directorate within 90 days from the effective date of the rejection or cancellation of the membership. If the Directorate upholds the decision, the client can chose to appeal to the Federal Court of Canada.

For a CBP-based revocation, the client can submit an appeal to the U.S. CBP Trusted Traveler Ombudsman.

More details on each agency's recourse procedures can be found on their respective websites.

<b>CONTACTS:</b> Prepared by Madona Radi	Tel. no. 613-954-6319	Approved by (ADM level only)	Tel. no.
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